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EXAMINER

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1 RECORD OF ORAL HEARING
2 UNITED STATES PATENT AND TRADEMARK OFFICE

3
4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES

6
7 Appeal 2010-005625
8 Application 10/057,927
9 Technology Center 3600

10
11 Oral Hearing Held: Tuesday, July 12, 2011
12

13
14 Before HUBERT C. LORIN, BIBHU R. MOHANTY and
15 MEREDITH C. PETRAVICK, Administrative Patent Judges
16

17 ON BEHALF OF THE APPELLANT:

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23 *The above-entitled matter came on for hearing on Tuesday, July 12,*
24 *2011, commencing at 11:25 a.m., at the U.S. Patent and Trademark Office,*
25 *600 Dulany Street, 9th Floor, Hearing Room D, Alexandria, Virginia, before*
26 *Lori B. Allen, notary public.*
27

1 THE USHER: Appeal Number 2010-5625, Mr. Baker.

2 JUDGE LORIN: Good morning, Mr. Baker.

3 MR. BAKER: Good morning, Your Honors. How are you
4 today?

5 JUDGE LORIN: Very well, and thank you for your patience.
6 We've had some technical problems this morning, and we really appreciate
7 you waiting and being patient with us.

8 MR. BAKER: I'm right down the street, so in some ways I was
9 hoping that maybe you guys could have called me when you were ready.

10 JUDGE LORIN: Yeah. Well, we had no idea. You know. As it
11 happened, no idea. We're sorry. Okay. Well, we're familiar with the record.
12 You have 20 minutes.

13 MR. BAKER: The subject matter at issue today, Claim 10, is
14 directed to a data processing apparatus for processing purchase data. For
15 example, this data might be found at a point of sale at a department store.
16 The apparatus includes data communication means, program transmission
17 means, data reception means for receiving owner information sent from a
18 portable electronic terminal, so you could have a customer in the department
19 store who has a portable terminal.

20 And the point of sale device has reception means for receiving
21 owner information from that portable terminal. The claim further defines
22 means for determining whether a ticketing process should be executed, and
23 the last feature and the feature I want to attempt to focus on the most,
24 depending on what you would like to speak about, is the means for storing
25 information received from a ticket company as ticket printing data with the

1 owner information received from the portable, electronic terminal. This
2 configuration of the apparatus has a couple of benefits which are identified in
3 the brief.

4 Those include reduced processing time for purchasing tickets and
5 the ticket can include, ultimately, ownership information as well as traditional
6 data such as seat location and the date of the performance. So the
7 combination relied upon by the Examiner, the primary reference, is Susaki.
8 The OA acknowledges that Susaki fails to disclose storing information
9 received from the ticket company as ticket printing data. Applicants believe
10 that Susaki also fails to teach the second half of that functionality associated
11 with the means for storing; that is, that the storing is both of the ticket printing
12 data and the owner information received from the portable, electronic
13 terminal.

14 In regards to Susaki, the reason that that is clear to applicants is
15 that in Susaki the portable terminal that is disclosed and the feature which is
16 relied upon by the Examiners is ID transmission. That ID transmission is an
17 infrared communication between the mobile terminal 100 and the gate
18 terminal 101. So this would be, for example, going to a Wizards game; you
19 have your handheld device.

20 You have the electronic ticket on your handheld device; and
21 when you're going through the gate, you can also send ID information to
22 confirm that you are who you say you are with the ticket. This is different
23 than a situation when you are purchasing a ticket, and you have a portable
24 device, and you're combining the owner information with the ticketing
25 information to ultimately be able to print a ticket. So these are distinct uses of

1 electronic tickets. And because Susaki is related to a use wherein you're
2 going in through the gate, although there is this discussion of ID transmission,
3 there's nothing which relates to any type of storage that ID information with
4 ticketing data received from a ticket company.

5 The secondary reference relied upon by the Examiner to remedy
6 the acknowledged deficiency is Lewis. Lewis is directed to an electronic
7 ticketing, but the configuration is an Internet end user. The end user can
8 download the ticket and can print. If you look at, for example, Figure 2, the
9 ticket is a generic ticket. It's "Admit One." There's no ownership information
10 conveyed.

11 There's nothing to suggest that ownership information is ever
12 stored in combination with the ticket data. This is merely an opportunity to
13 download a ticket to go see the movies, to pay for that ticket and to print it
14 onsite. It's not related to a data processing apparatus, which would be used,
15 for example, at a point of sale at a department store, for example.

16 The last reference, Morrill, Jr., is relied upon by the Examiner
17 for a different feature. That feature was displaying a request to send data
18 screen, the authorization process. It does not teach anything regarding the
19 means for storing, which I can go on to now in this oral argument. So
20 because none of the three references teach that feature, singly, in combination
21 they also fail to teach an explicitly disclosed limitation of Claim 10.
22 Consequently, applicants believe that the rejection should be reversed. Are
23 there any questions?

24 JUDGE LORIN: Yeah. My question has to do with the
25 structure.

1 MR. BAKER: Yes.

2 JUDGE LORIN: Because I'm hearing you speak in terms of the
3 configuration performing your function as opposed to the configuration of the
4 prior art.

5 MR. BAKER: So applicants have invoked 112, 6th paragraph,
6 for means plus function.

7 JUDGE LORIN: Right.

8 MR. BAKER: So there is structure. The structure has
9 functionality, at least for this means.

10 JUDGE LORIN: Yeah. My question to you is what is the
11 distinction in structure. What have you disclosed structurally that's different
12 from the other prior art?

13 MR. BAKER: Well structurally you both have a data processing
14 apparatus. I agree with that. But, in Susaki, what would be the means for
15 receiving the ownership information? Would it be the gate? Would it be the
16 gate terminal? And, if so, where is there a teaching that that gate terminal,
17 that structure, also stores that ID information with the information regarding
18 the ticket which is received from the ticketing company?

19 So we do have similar structure, I agree, some type of processing
20 apparatus. But there's no teaching in Susaki that that apparatus is
21 programmed at a functionality, which is recited in Claim 10.

22 JUDGE PETRAVICK: Could you please tell us what your
23 corresponding structure is? You have a data communication in parent means
24 and data reception means. And you said, "The structure for receiving the ID."
25 Right?

1 MR. BAKER: Yes.

2 JUDGE PETRAVICK: What was that? In your apparatus you
3 have these three means that we see a means for a means for receiving
4 information, but what is your corresponding structure in your spec?

5 MR. BAKER: For the data reception means, or do you want me
6 to go through each element? Is there a particular means in particular?

7 JUDGE PETRAVICK: Well, one thing in your appeal brief, you
8 listed what corresponding structure is. Right?

9 MR. BAKER: Yes. That's where I turned to, yes.

10 JUDGE PETRAVICK: And for each of those you say it's the
11 radio communication means. Right? 33?

12 MR. BAKER: For everything but the means for confirming; that
13 last thing is the CPU.

14 JUDGE PETRAVICK: What it needs for storing. Right?

15 MR. BAKER: But for the means for storing --

16 JUDGE PETRAVICK: But let's just stick with what is doing the
17 receiving of a data ID. We're not --

18 MR. BAKER: Okay. So, right. "Radio communication means
19 33,: I got it.

20 JUDGE PETRAVICK: Right. That's a Bluetooth device in your
21 spec. Correct?

22 MR. BAKER: That is correct.

23 JUDGE PETRAVICK: And now you have a means for storing.
24 Right?

25 MR. BAKER: Correct.

1 JUDGE PETRAVICK: And what is the corresponding structure
2 for that?

3 MR. BAKER: Looking at Figure 3, it would probably be the
4 RAM or the ROM, so 19 or 20.

5 JUDGE PETRAVICK: So it's a ROM. Right?

6 MR. BAKER: Yes.

7 JUDGE PETRAVICK: And is your Bluetooth in the same
8 device as your ROM?

9 MR. BAKER: No, for Bluetooth there has to be a sender and a
10 reception device. So looking at Figure 3, the radio communication means for
11 the data processor 3 receives the Bluetooth signal, and the information
12 ultimately is stored in, let's say, the ROM 19.

13 JUDGE PETRAVICK: So your corresponding structure is a
14 Bluetooth receiving device and a ROM?

15 MR. BAKER: Correct.

16 JUDGE PETRAVICK: And this is 112, 6th.

17 MR. BAKER: Correct.

18 JUDGE PETRAVICK: So in Susaki where you talked about the
19 gates receiving an infrared signal, an infrared and the device for receiving into
20 that.

21 MR. BAKER: Yes.

22 JUDGE PETRAVICK: Right. And now we've got a Bluetooth
23 or an equivalent is what we're construing the claim to do. Have you presented
24 any evidence that that's an equivalent?

25 MR. BAKER: I would acknowledge that the infrared

1 communication itself, and whatever reception means that is, is an equivalent
2 to the Bluetooth reception. I would not dispute that structure.

3 JUDGE PETRAVICK: Structure?

4 MR. BAKER: Yes.

5 JUDGE PETRAVICK: Now, does any of the devices in the
6 references -- we now have a ROM that's the means for storing. Right?

7 MR. BAKER: Yes.

8 JUDGE PETRAVICK: So our claim covers ROM or an
9 equivalent device.

10 MR. BAKER: For storing the owner information; so, yes, I'm
11 certain that these devices have some sort of ROM. Yes.

12 JUDGE PETRAVICK: Okay.

13 MR. BAKER: Now what they store I think would be in dispute;
14 but that they have a ROM, I would not dispute that.

15 JUDGE PETRAVICK: The structure is the ROM or something
16 that is equivalent?

17 MR. BAKER: Yes. I would agree. But I would say that in
18 particular, in Susaki, that I'd have to see or review exactly what the gate
19 terminal structure is. But it is receiving some infrared signal, I agree. That
20 infrared signal is going to receive ID. But is the gate terminal -- does that
21 CPU associate the ID information from the mobile terminal?

22 JUDGE PETRAVICK: Could you please point out to me the
23 claim where it's required the device -- you have an apparatus claim. Right?
24 Not an article claim?

25 MR. BAKER: Yes.

1 JUDGE PETRAVICK: So where's the device that does the
2 storing after the same as the receiving in the same device?

3 MR. BAKER: So you're distinguishing between an apparatus
4 claim and you're saying that the breadth of this claim enables the storing
5 means and reception means to be in separate apparatuses?

6 JUDGE PETRAVICK: I'm asking you where your claim requires
7 that they are not in separate apparatuses?

8 MR. BAKER: So looking at the second to last claim structure,
9 "the means for confirming," which is effectively the structure is a CPU that
10 has to receive information regarding the ticket via the network, and, that same
11 structure stores the received information -- ticket printing data -- with the
12 owner information received from the portable, electronic terminal. So it's
13 clear that the ownership information it received from a separate device, the
14 separate device being the portable, electronic terminal. And this one
15 structure, this CPU in conjunction with the communication 30 and the RAM
16 20, implements all the functionality recited within that paragraph.

17 JUDGE PETRAVICK: So you're saying that because means is
18 at the front of that claim, it's required to have all of those -- the CPU, the
19 Bluetooth, and the ROM all have to be within one device.

20 MR. BAKER: Yes. The way the claim is written, there is a set
21 of structure that implements one, two, three different functionalities
22 confirming the requested ticket, receiving information regarding the requested
23 ticket; and, it ultimately stores the received information and ticket printing
24 data with the owner information received from the portable, electronic
25 terminal. And all it's structure could be found in Figure 3.

1 And there's no figure that suggests an interpretation where that
2 structure is found in multiple devices. So I would say that with 112, 6th,
3 there has to be an explicit nexus between the recited functionality of the
4 structure. Then you look to the spec to see what that structure is, and then
5 you can have the corresponding equivalents. Once you conduct that analysis,
6 look at Figure 3. Figure 3 illustrates a single apparatus.

7 That apparatus has a CPU 17 for doing the processing. It has
8 storage capability with the RAM and the ROM, and it has reception means all
9 within one apparatus, the reception means being element 33. And after you
10 make that analysis and giving any type of broad, reasonable interpretation
11 you're supposed to give in light of the spec, it's clear that what the inventors
12 believed to be their invention is the ability to have a point of sale terminal in
13 communication with the customer's handheld device and the ability to
14 expedite the ticketing process, and also to produce a ticket which has
15 additional information, which is not only the seating, but also the ownership
16 information. If you look, for example, at Figure 8, it says, "XX XX Esquire."
17 And if my understanding is correct, that is identifying who the ticket holder
18 is.

19 JUDGE PETRAVICK: So what you're saying now is that we
20 have to construe the means of all those scores as one single device as opposed
21 to the means for storing being construed as just the ROM for corresponding.

22 MR. BAKER: Okay. So you could parse it and say the means
23 for storing is the ROM. And the means for receiving is the communication,
24 IF 30, and the means for processing is 17. But all that functionality that
25 works collectively, there's a synergy to it, if I may. So you can parse and say,

1 what's each one do it individually, but the three work together as a
2 functioning unit, just like the three judges work together.

3 I could parse you guys apart, but ultimately you each have, you
4 know, separate responsibilities or tasks, or questions to ask me; but,
5 collectively, you're a panel. And, collectively, those three things implement
6 that functionality together. So, yes, it can be parsed; but I consider them as
7 three separate items, which work as a unit, a processing unit which has the
8 ability to receive information and to store information.

9 JUDGE LORIN: Okay, counsel. I appreciate your clarification.
10 Thank you. Any further comments?

11 MR. BAKER: No, that's all we have; and thank you for your
12 time.

13 JUDGE LORIN: Yeah. Thank you very much.

14 (Whereupon, at 11:44 a.m., the proceedings were concluded.)

15 * * * * *